

IN THE COURT OF APPEALS OF TENNESSEE

FILED
December 23, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

BRENDA EDMUNDSON,
Plaintiff-Appellant,

) C/A NO. 03A01-9609-CV-00290

v.

) APPEAL AS OF RIGHT FROM THE
) KNOX COUNTY CIRCUIT COURT

DENNIS and WILMA PRATT,
and DETECTIVE LARRY JOHNSON
and KNOX COUNTY SHERIFF'S
DEPARTMENT,

) HONORABLE HAROLD WIMBERLY,
) JUDGE

Defendants-Appellees.)

For Appellant

Brenda Edmundson, *Pro Se*
Knoxville, Tennessee

For Appellees

Larry Johnson and Knox
County Sheriff's Department

MARY ANN STACKHOUSE
Deputy Knox County Law Director
Knoxville, Tennessee

For Appellees

Dennis and Wilma Pratt

CARL W. ESHBAUGH
Eshbaugh, Simpson and Varner
Knoxville, Tennessee

OPINION

APPEAL DISMISSED
REMANDED

Susano, J.

The plaintiff filed a civil warrant in the Knox County General Sessions Court for false arrest and other related matters. After an adverse judgment there, the plaintiff appealed to Circuit Court. On June 17, 1996, an order was entered in that court dismissing the plaintiff's causes of action against defendants Larry Johnson and the Knox County Sheriff's Department. This case was finally concluded at the trial court level when the suit against the remaining defendants, Dennis Pratt and Wilma Pratt, was dismissed on their motion by judgment entered August 6, 1996. On Friday, September 6, 1996, the thirty-first day following the entry of the judgment, the plaintiff filed a notice of appeal.

The notice of appeal was not timely filed. Rule 4(a) of the Tennessee Rules of Appellate Procedure provides that the notice of appeal "shall be filed with and received by the clerk of the trial court within 30 days after the date of entry of the judgment appealed from." Rule 21(a) of the same rules provides that "the date of the act, event, or default after which the designated period of time begins to run shall not be included." This means that the date of August 6 is not included, thus leaving 25 days in the month of August which are chargeable against the 30-day time period specified in Rule 4(a). The remaining five days of the 30-day period are the days of September 1 through 5, inclusive. The notice of appeal had to be filed on or before September 5. Therefore, a notice of appeal filed on September 6 was filed one day too late.

Can we ignore this late filing? The answer is clearly no. Rule 2 of the Tennessee Rules of Appellate Procedure specifically provides that an appellate court "shall not permit the extension of time for filing a notice of appeal prescribed in rule 4." See **John Barb, Inc. v. Underwriters at Lloyds**, 653 S.W.2d 422, 424 (Tenn. App. 1983). Rule 21(b), T.R.A.P., is to the same effect.

Since the notice of appeal was not filed within 30 days of the entry of the judgment of August 6, 1996, we do not have jurisdiction to hear this appeal. **John Barb, Inc.**, 653 S.W.2d at 424. See also **Jefferson v. Pneumo Services Corp.**, 699 S.W.2d 181, 184 (Tenn. App. 1985).

Litigants who proceed *pro se* are entitled to fair and equal treatment; but "they must follow the same procedural and substantive law as the represented party." **Irvin v. City of Clarksville**, 767 S.W.2d 649, 652 (Tenn. App. 1988).

This appeal is dismissed at the appellant's costs. This case is remanded to the trial court for the collection of costs assessed there, pursuant to applicable law.

Charles D. Susano, Jr., J.

CONCUR:

Houston M. Goddard, P.J.

Don T. McMurray, J.